

1 CALL & JENSEN
2 A Professional Corporation
3 John T. Egley, Bar No. 232545
4 jegley@calljensen.com
5 Chris C. Scheithauer, Bar No. 184798
6 cscheithauer@calljensen.com
7 610 Newport Center Drive, Suite 700
8 Newport Beach, CA 92660
9 Tel: (949) 717-3000

10 Attorneys for Defendants CHRISTENSEN BROTHERS
11 GENERAL ENGINEERING, INC. and
12 CALEB CHRISTENSEN

13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16

17 SEVERO JOHN HERNANDEZ, UMEET
18 NAND, KRISTOFER BARR, on behalf of
19 themselves and all others similarly
20 situated,

21 Plaintiffs,

22 vs.

23 CHRISTENSEN BROTHERS GENERAL
24 ENGINEERING, INC., a California
25 Corporation; CALEB CHRISTENSEN,
26 and DOES 1-20, inclusive,

27 Defendants.
28

Case No. 5:22-cv-836

**NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §§ 1331,
1441 AND 1446**

TO THE CLERK OF THE UNITED STATES DISTRICT COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441(a), and 1446, defendants Christensen Brothers General Engineering, Inc. and Caleb Christensen (“Defendants”) remove to the United States District Court for the Central District of California, the state court action described below. In accordance with 28 U.S.C. § 1446(a), Defendants submit the following statement of the grounds for removal.

I. STATEMENT OF JURISDICTION

1. 28 U.S.C. 1441(a) permits removal of state court actions if a district court would have original jurisdiction. This Court would have original jurisdiction because under 28 U.S.C. § 1331, district courts have original jurisdiction in civil actions arising under the laws of the United States. This case became removable when Plaintiffs filed their Second Amended Class Action Complaint, (filed April 21, 2022 with effective date of May 13, 2022), asserting a claim (First Cause of Action) for violation of the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* and adding Caleb Christensen as a new defendant. The new defendant, Caleb Christensen, along with the prior defendant, Christensen Brothers General Engineering, Inc., both have proper and sufficient grounds to remove this case and jointly do so.

II. VENUE

2. Venue is proper in the United States District Court for the Central District of California because the removed action was originally filed in San Bernardino County Superior Court. *See* 28 U.S.C. §§ 84(c), 1441(a) & 1446(a), (b)(3).

III. PLEADINGS, PROCESS, AND ORDERS

3. On March 17, 2021, Plaintiff Severo John Hernandez (“Plaintiff”) filed a complaint in San Bernardino County Superior Court naming Christensen Brothers General Engineering, Inc. as a defendant, which action was assigned Case No. CIVSB2107947 (the “State Court Action”). The original complaint in the State Court Action asserted causes of action for (1) Failure to Pay All Wages in Violation of Cal. Labor code §§ 200 *et seq.*, 1194, and IWC Wage Order 16-2001; (2) Non-payment of

Overtime Compensation in Violation of Cal. Labor Code §§ 510(a), 1194, and IWC Wage Order 16-2001; (3) Failure to Provide Proper Meal Breaks in Violation of Cal. Labor Code §§ 512, 226.7, and IWC Wage Order 16-2001; (4) Failure to Authorize and Permit Proper Rest Breaks in Violation of Cal. Labor Code § 226.7, and IWC Wage Order 16-2001; (5) Failure to Properly Maintain and Submit Itemized Wage Statements in Violation of Cal. Labor Code § 226.7, and IWC Wage Order 16-2001; (6) Violation of Cal. Labor Code §§ 201 and 202.7; (7) Violation of Cal. Business & Professions Code § 17200 *et seq*; and (8) Violation of Prevailing Wage Law, Cal. Labor Code § 1771 *et seq*.

4. On September 10, 2021, Plaintiff Severo John Hernandez filed a First Amended Complaint in the State Court Action. The Amended Complaint asserted the same eight causes of action against as the original complaint plus a ninth (9th) cause of action for Violation of California Labor Code Private Attorney Act, Labor Code § 2699 *et seq*. On October 14, 2021, defendant Christensen Brothers General Engineering, Inc. filed an Answer to the First Amended Complaint.

5. On April 21, 2022 (with a docket effective date by the Court of May 13, 2022), Plaintiffs Severo John Hernandez, Unmeet Nand, and Kristopher Barr (“Plaintiffs”) Filed a Second Amended Complaint (“SAC”) in the State Court Action, which added additional plaintiffs *and an additional defendant* (Caleb Christensen). The SAC asserts claims against Defendants for: (1) Failure to Pay Overtime and Minimum Wage Under **Fair Labor Standards Act 29 U.S.C. § 201** *et seq*; (2) Failure to Pay All Wages in Violation of Cal. Labor code §§ 200 *et seq.*, 1194, and IWC Wage Order 16-2001; (3) Non-payment of Overtime Compensation in Violation of Cal. Labor Code §§ 510(a), 1194, and IWC Wage Order 16-2001; (4) Failure to Provide Proper Meal Breaks in Violation of Cal. Labor Code §§ 512, 226.7, and IWC Wage Order 16-2001; (5) Failure to Authorize and Permit Proper Rest Breaks in Violation of Cal. Labor Code § 226.7, and IWC Wage Order 16-2001; (6) Failure to Properly Maintain and Submit Itemized Wage Statements in Violation of Cal. Labor Code § 226.7, and IWC Wage

1 Order 16-2001; (7) Violation of Cal. Labor Code §§ 201 and 202.7; (8) Violation of
2 Cal. Business & Professions Code § 17200 et seq; (9) Violation of Prevailing Wage
3 Law, Cal. Labor Code § 1771 et seq.; (10) Failure to Reimburse for Necessary Business
4 Expenses, Cal. Labor Code § 2802; and (11) Violation of California Labor Code Private
5 Attorney Act, Labor Code § 2699 et seq.

6 6. A copy of the Second Amended Complaint, is attached as **Exhibit 1** to the
7 Declaration of Chris C. Scheithauer (“Scheithauer Decl.”) that accompanies this Notice
8 of Removal. Attached as **Exhibit 2** to the Scheithauer Decl. that accompanies this
9 Notice of Removal is a copy of the Answer to the Second Amended Complaint filed in
10 the State Court Action; Attached as **Exhibit 3** to the Scheithauer Decl. that accompanies
11 this Notice of Removal is a copy of the pleadings, process and orders in the State Court
12 Action. Exhibits 1, 2, and 3 to the Scheithauer Decl. constitute all the pleadings and
13 process that Defendants have received in this action.

14 7. Defendants first received notice that the Second Amended Complaint was
15 accepted for filing by the Court on May 17, 2022 by checking the docket in the State
16 Court Action. Defendant Caleb Christensen has not yet been served with a summons.

17 8. As of the date of this Notice of Removal, Defendants are not aware of any
18 other parties that have been served in this case or with the Second Amended Complaint.

19 9. All named Defendants who have been served join in and consent to this
20 removal. In addition defendant Caleb Christensen, who has not been served, also
21 consents to and joins in this removal.

22 10. Copies of the process, pleadings, and orders served upon Defendants
23 accompany this notice as exhibits to the Declaration of Chris C. Scheithauer, as
24 required by 28 U.S.C. § 1446(a). To Defendants’ knowledge, no further process,
25 pleadings, or orders related to this case have been filed in the Superior Court of
26 California.

1 **IV. TIMELINESS OF REMOVAL**

2 11. This Notice of Removal is timely filed as it is filed within thirty (30) days
3 of April 21, 2022, the date the Second Amended Complaint was filed in the State Court
4 Action. *See* 28 U.S.C. § 1446(b)(3) and which added Caleb Christensen as a defendant
5 and asserted a federal FLSA claim.

6 **V. FEDERAL QUESTION JURISDICTION**

7 12. The federal question statute, 28 U.S.C. § 1331 provides that “[t]he district
8 courts shall have original jurisdiction of all civil actions arising under the Constitution,
9 laws, or treaties of the United States.”

10 13. Plaintiffs allege in the First Cause of Action in the Second Amended
11 Complaint that Defendants violated the federal Fair Labor Standards Act, 29 U.S.C. §
12 201 *et seq.* *See* Second Amended Complaint at ¶¶ 1, 25, 56-67.

13 14. Accordingly, because the Second Amended Complaint involves an action
14 arising under the laws of the United States, this Court has original jurisdiction over this
15 dispute.

16 **VI. NOTICE OF REMOVAL TO COURT AND ADVERSE PARTY**

17 15. Promptly after filing this Notice of Removal and pursuant to 28 USC
18 1146(d), Defendants will give written notice of the same to Plaintiffs and will file a
19 copy of this Notice with the Superior Court of the State of California for the County of
20 San Bernardino.

21 **VII. CONCLUSION AND REQUESTED RELIEF**

22 16. Because there is a federal question at issue in this dispute, Defendants pray
23 that this Court accept the removal of this civil action from the Superior Court of the
24 State of California, County of San Bernardino, to the United States District Court for
25 the Central District of California and proceed with this matter as if it had been
26 originally filed herein.

1 Dated: May 18, 2022

CALL & JENSEN
A Professional Corporation
John T. Egley
Chris C. Scheithauer

2
3
4 By: 
Chris C. Scheithauer

5 Attorneys for Defendants, CHRISTENSEN
6 BROTHERS GENERAL ENGINEERING, INC.
and CALEB CHRISTENSEN
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

24
25
26 CALL &
JENSEN
EST. 1981